

Message

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Sent: 11/7/2018 2:45:03 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
Subject: EPA Finalizes Another Action to Reform
NSR and Improve Regulatory Certainty

EPA Finalizes Another Action to Reform NSR and Improve Regulatory Certainty

Action Achieves Environmental Compliance While Reducing Red Tape

WASHINGTON (November 7, 2018) - Today, the U.S. Environmental Protection Agency (EPA) is restoring a long-delayed 2009 EPA action that clarifies “project aggregation” for the New Source Review (NSR) permitting program. This action will greatly improve regulatory certainty and remove unnecessary obstacles to projects aiming to improve the reliability, efficiency, and safety of facilities while maintaining air quality standards.

“Previously, New Source Review regularly discouraged companies from employing the latest energy-efficient equipment,” said EPA Acting Administrator Andrew Wheeler. **“Our updates will remove undue regulatory barriers, provide greater certainty to America’s job creators and energy providers, and incentivize upgrades that will improve air quality.”**

This final action will improve implementation of the NSR program by identifying clear principles for project aggregation, thus improving the implementation of the permitting program and serving as a helpful guide for facilities when considering or undergoing modifications. This, in turn, will ensure better compliance with air quality standards and continue the U.S. trend toward even cleaner air.

“Project aggregation” refers to the assessment by owners and permitting authorities regarding whether multiple related physical or operational changes to a facility should be considered a single “project” for NSR applicability. In today’s action EPA is affirming the interpretation of its NSR program as set forth in a 2009 action on “project aggregation,” and further clarifying the implications of that action for the NSR program. In particular, EPA is affirming the test it developed in 2009 to assess the

“interrelatedness” of projects and the presumed time period of exclusion at three years.

This is the latest in a series of actions the agency has undertaken to improve the [NSR process](#) and related permitting programs, including:

- In December 2017, EPA issued a [policy memorandum](#) clarifying that, under the existing regulatory language, so long as a company complies with the procedural requirements for making a preconstruction “projected actual emissions” analysis, then EPA will not come in and “second guess” that analysis.
- In January 2018, Assistant Administrator Wehrum issued a [guidance memorandum](#) withdrawing the 1995 “once-in-always-in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. This memo is another step by which EPA is reducing unnecessary regulatory burdens that deterred innovative efforts to improve the environment.
- In March 2018, EPA issued a [memorandum](#) titled, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” providing EPA’s interpretation of existing NSR regulations with respect to the accounting of emissions changes from a project under Step 1 of the NSR applicability process. The memo streamlines permitting without sacrificing environmental protections, and reduces burdens to develop and expand facilities while encouraging companies to reduce pollution.

Background

Congress established New Source Review as a preconstruction permitting program in the 1977 Clean Air Act Amendments. The program intended to ensure the maintenance of air quality standards around the country and that innovative technology is installed at new plants or existing plants undergoing major modifications.

Under the NSR program, before constructing a new stationary emission source or major modification of an existing source, the source operator must determine whether the project will increase emissions above a certain threshold. If so, the operator may need to get a permit from a state government or EPA that may require installation of control technology or other measures.

This interpretation of project aggregation was laid out in a more comprehensive 2009 action issued at the end of the Bush Administration. In 2010 during the Obama Administration, EPA proposed to revoke that interpretation by issuing a formal “reconsideration” and opened a public notice and comment period. While the agency assessed whether it would ultimately change the interpretation, EPA put a hold on the action and stayed it pursuant to the Administrative Procedures Act (APA). EPA has not taken any action with regard to its interpretation since that comment period closed, until today.

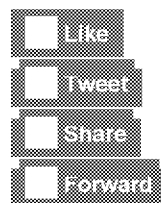
EPA is now taking action to do the following:

- Make a final determination not to revoke the 2009 project aggregation action;
- Clarify and uphold the interpretation laid out in the 2009 action; and
- Lift the APA stay of the action that has been in place since 2010.

Learn more at: <https://www.epa.gov/nsr/nsr-regulatory-actions>.

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